

To: City Executive Board
Date: 21 November 2017
Report of: Executive Director, Sustainable City
Title of Report: Local Authority Trading Company

Summary and recommendations	
Purpose of report:	To report back on the establishment of the Local Authority Trading Company
Key decision:	Yes
Executive Board Members:	Councillor Ed Turner - Deputy Leader and Board Member for Finance, Asset Management and Public Health Councillor Susan Brown - Board Member for Customer and Corporate Services Councillor John Tanner - Board Member for A Clean and Green Oxford
Corporate Priority:	Efficient & Effective Council
Policy Framework:	Corporate Plan
Recommendation(s): That the City Executive Board resolves to:	
<ol style="list-style-type: none"> 1) Agree the "Transfer Date" of 1 April 2018 – that being the date on which all service delivery currently carried out by the Council's Direct Services will be transferred to the two new LATCo companies; 2) Approve the terms of the updated Memorandum of Understanding (as attached to this report as Appendix 1) which sets out the basis of the "Service" and "Support" contracts between the Council and LATCo companies; and delegate authority to the Interim Chief Executive, in consultation with the Council's s151 and Monitoring Officers and the Leader of the Council to finalise the terms of and to enter into both the Service Contract and the Support Contract on behalf of the Council; 3) Delegate authority to the Interim Chief Executive, in consultation with the Council's s151 and Monitoring Officers, to approve the terms under which the Council will enter into leases and/or licences covering the LATCo companies' occupation of relevant Council premises and use of Council resources; 	

- 4) Agree the transfer to Oxford Direct Services Limited on the Transfer Date of all Direct Services staff engaged in service delivery immediately prior to the Transfer Date on the terms set out in this report;
- 5) Approve the arrangements ensuring that all transferring staff will continue to have access to the Local Government Pension Scheme and delegate authority to the Interim Chief Executive, in consultation with the Council's s151 and Monitoring Officers and the Leader of the Council, on behalf of the Council, to enter into an appropriate tri-partite agreement with the Scheme Administrator and Oxford Direct Services Limited which sets out the basis of contributions into the LGPS;
- 6) Authorise the transfer to Oxford Direct Services Trading Limited of all customer contracts with third parties in existence on the Transfer Date, and authorise the transfer of all supplier contracts to the two LATCo companies (as appropriate) in existence on the Transfer Date;
- 7) Note the provisions of the initial Business Plan for the Companies (the executive summary of which is at appendix 2)
- 8) Note and approve the "client side" arrangements as set out in this report in regard to the Council's management of the Service Contract with Oxford Direct Services Limited.

Appendices

Appendix 1	Service/Support Contract Memorandum of Understanding
Appendix 2	Business Plan Executive Summary
Appendix 3	Risk Register

Introduction

1. In March 2017 the City Executive Board approved in principle the setting up of a Local Authority Trading Company (LATCo) to carry out the performance of those statutory and related services then provided by the Council through its Direct Services operation and also traded externally. Two new companies were formed, Oxford Direct Services Limited ("ODS Ltd") which is intended to hold "Teckal" status, and as such will provide services to and on behalf of the Council) and Oxford Direct Services Trading Limited ("ODS Trading Ltd"), which will trade with third parties.
2. The purpose of the companies is to return value to the Council (as the sole Shareholder) and support excellent public services in Oxford. The companies will do this through delivering efficient, value for money services and generating long term sustainable growth in income through external trading.

3. In July 2017 a further report set out a number of detailed matters leaving a remainder to be completed. These items are now reaching conclusion and the associated recommendations are the subject of this third and concluding report.

Further work following July 2017 CEB recommendations

4. CEB asked for a report back on the following items:

Transfer date

5. There will be a phased implementation of steps over the coming months to ensure that the new companies are fully operational and trading by 1 April 2018 (the "Transfer Date"). This date should ensure that all the critical path items are completed - in particular the income management system (to enable the companies to receive and allocate income) and the payroll system (which needs this additional time to ensure a thorough implementation and testing process).

The Relationship between the Council and the Companies

6. The basis of the relationship is a two-way partnership of collaboration, with the parties committed to working together for the benefit of both. . This means the Council and the companies seeking to maximise the opportunity of delivering in-house work now and in the future, be that with the same skill sets or developing new ones. It also requires both parties to recognise the new commercial realities needed to compete in the external market - with a view to maximising the value returned to the Shareholder.
7. The Council and the Companies have agreed the following strategic principles (included in the Memorandum of Understanding) in delivering the companies' purpose:
 - The focus will be to deliver the MTFP requirement, through reduced costs, rebates, payments and dividend
 - There is an expectation that the current MTFP estimates can be exceeded by use of the company structure and this should be pursued
 - The council through its role as shareholder will hold influence over the core terms and conditions of employment
 - The expectation is that a relatively low level of profit will be retained in the Teckal company to cover risk and fund investment
 - The council is seeking a low level of risk transfer to the Teckal company
 - The trading company will retain profit commensurate with the risk transferred.
 - There will be a lower level of control over the commercial activities of the trading company

Contract between the Council and ODS Limited

8. The "Service Contract" will set out the terms under which ODS Limited, the Teckal Company, will undertake work from the Transfer Date on all relevant Council statutory functions and related work, as currently undertaken by Direct Services. The updated Memorandum of Understanding outlines the arrangements which will

form the Service Contract and this is attached at appendix 1. The Service Contract term is for a period of twenty years and the parties can agree to extend the Expiry Date by a maximum of five years. The Council must be satisfied throughout the contract term that its arrangements with OFS Ltd represent Best Value.

Contract between the new companies and the Council

9. The “Support Contract” will set out the terms under which the Council will from the Transfer Date provide all relevant support services to the two new companies. The updated Memorandum of Understanding outlines the arrangements which will form the Support Contract. The Support Contract term will replicate that of the Service Contract.

Three year review

10. As from the Transfer Date the services delivered under both the Service Contract and the Support Contract will initially be largely as they are now and will be charged on a similar basis. However, the Council and the companies will be committed to take all opportunities achieve efficiencies from the status quo.

11. Over time experience is likely to demonstrate new and better ways of working and the opportunity will be taken to undertake a holistic review of both contracts no later than the third anniversary of the Commencement Date. The review will cover but will not be restricted to:-

- The services required by the council
- The cost of those services charged by the company
- The services required by the company
- The costs of those services
- Review of risk sharing agreement
- Review of dividend distribution

Transfer of staff

12. The transfer of the delivery of all services currently provided by the Council’s Direct Services will necessarily mean that those Direct Services staff engaged in service delivery immediately prior to the Transfer Date will transfer to the LATCo. The transfer will be in accordance with all relevant employment laws, protecting terms and conditions including pensions. This requirement will form part of the Service Contract. The entitlement for staff to receive the Council’s new pay deal will also be a contractual requirement. All transferring staff will become employees of ODS Ltd (the Teckal arm).

13. ODS Ltd will initially ‘sell’ labour across to ODS Trading Ltd (the trading company). This ‘external’ turnover (for the purposes of the “Teckal” calculation under which external income should not exceed 20% of total income received) will be calculated at the Transfer Date to ensure compliance and closely monitored thereafter.

14. The terms of this staffing arrangement between the two LATCo companies will be set out in a commercial agreement between them, signed off by the Company Boards.

Continued access to the Local Government Pension Scheme

15. All transferring staff will continue to have access to the Local Government Pension Scheme under 'Designated Body' status. This means staff will continue to receive all the LGPS benefits and pay the same contributions, as if they had not changed employer.
16. Until such time that there are further discussions with trade unions about closing the scheme to new entrants combined with developing an alternative attractive employment package for them, the LGPS will be offered to new staff. It will remain "open" and "grouped" with the City Council for the purposes of calculating employers contributions and paying past scheme deficits. This means the employer payments into the scheme remain the same (at least until the next triennial valuation) for the Council and ODS Ltd.
17. A tri-partite agreement (Oxford City Council, ODS Ltd and Oxfordshire County Council as the LGPS Administrator) will be entered into which indemnifies ODS Ltd against liability for past deficits meaning that the company will be able to account for its pension liabilities on a defined contribution basis rather than a defined benefit basis which would cause material issues for ODS Ltd's accounts and potentially threaten its viability.
18. Ultimately ODS Ltd's Company Auditor will need to be satisfied with the above arrangements, but external Legal advice and a view from County and its Actuary indicate this will be acceptable to the Auditor. The Head of Finance will seek a view from the Company's Auditor in advance of finalising the position on pensions.
19. The Service Contract will also set out the terms of access to the LGPS in the context of a grouped arrangements for the Council and ODS Ltd to ensure the decisions of one party regarding its membership do not adversely impact the other party.

Leases & Licences

20. Property assets will be retained by the Council and leased to the company at a market rate. The Council will retain responsibility for structural and external repairs and maintenance.
21. For plant and equipment the Council will fund their purchase through loans but the company will be responsible for repair and maintenance. All vehicles will be leased to the companies over their useful life akin to a finance lease with the ownership of the vehicle transferring to the company following the payment of the final lease instalment
22. The Council will enter into leases or licences with ODS for their use of vehicles and plant. Following the previously delegated authority granted at July CEB, the Chief Executive in consultation with the Council's s151 and Monitoring Officers and Leader of the Council will agree these leases and licences with the ODS Directors.

Loan agreement

23. Under the same delegated authority as above the Chief Executive will agree with the LATCo Directors the terms of a loan (on commercial terms) to the Companies to assist with cashflow in year 1. The companies are able to work together and undertake related party transactions for the benefit of the group.

Transfer of Third Party Contracts to ODS Trading Limited

24. On the Transfer Date, the Council will seek to transfer all third party customer contracts to ODS Trading Ltd. In consultation with Legal Services a process is being worked up to seek to minimise the risk of any loss of clients. Predominantly this applies to the commercial waste service but there are other arrangements in place (e.g. building repairs and maintenance) which will require close liaison with Clients.

Retention of In-house Commercial Waste Service

25. Under the provisions of Section 45 of the Environmental Protection Act 1990 all waste collection authorities must provide a commercial waste collection service if so requested by a local resident. While it is envisaged that the majority of Oxford commercial waste customers will be happy to place their business with ODS Trading Ltd, the Council will ensure that a service will be made available to any Oxford resident exercising their statutory right to receive such a collection from the Council. Inevitably the costs of providing such a service will properly reflect the overheads involved, so, given the limited scope of the service, the fees are likely to be significantly higher than the commercial waste service provided by ODS Trading Ltd. Customers outside Oxford or sourced via another commercial operator will fall entirely outside the s45 arrangements.

Shareholder Agreement

26. A Shareholder Agreement has been drafted which sets out the relationship between the Council and the LATCo companies. This includes a list of matters reserved to the Shareholder. The Shareholder's Agreement will be considered at the inaugural ODS Shareholder Group meeting to be convened in December 2017.

The provisions of an initial Business Plan

27. A Business Plan has been drafted for consideration by the Shareholder's Group at the December 2017 meeting. The Executive Summary is included at appendix 2 of this report and this sets out the objective to deliver an additional £500k per annum to the Shareholder by 2021/22 with ambition for a further additional £500k per annum.

Client side arrangements

28. A quarterly Partnership Board will provide a regular formal opportunity for Portfolio Holders, relevant spokespersons from other parties, Client and ODS Leads to review and comment on the services provided.

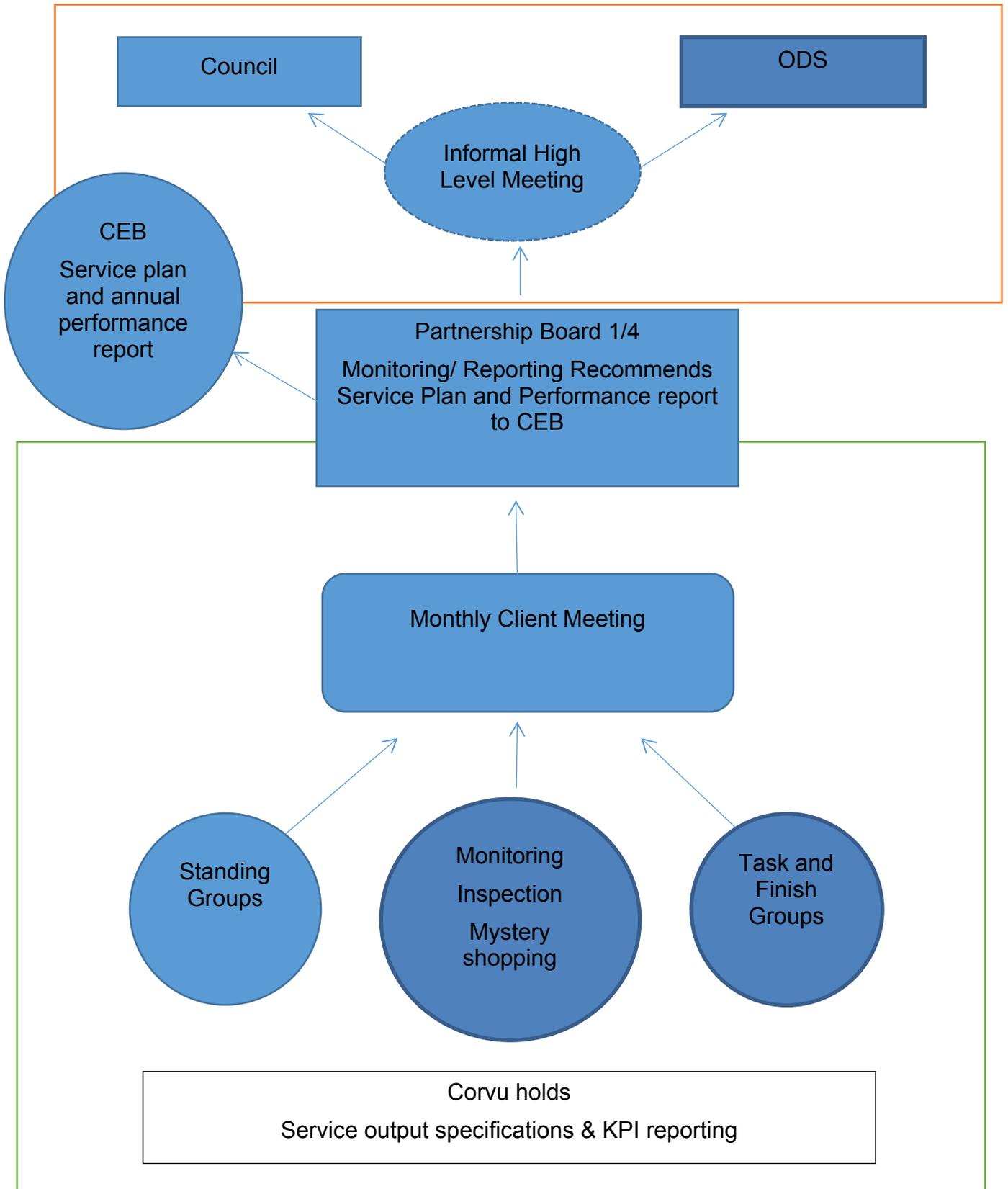
29. The Annual General Meeting will be open to all Members and the Scrutiny Committee can formally engage with the Shareholder Group in the same way as the Housing Company.
30. The operational arrangements for the client management function will be built around the existing, sound client management for housing and property.
31. The Head of Housing & Property will undertake the role of Principle Contract Manager (PCM) and will be the single point of co-ordination of all client service functions. The PCM will be supported by nominated officers (see table 1 below) for each discipline and their roles will vary from a strategy/policy lead to a fully functioning client/commissioner holding a budget.

Table 1

Functional Area	Lead Officer	Roles
Building/Property	Martin Shaw – Property Services Manager	Strategy, policy, budget
Engineering	Shaun Hatton – Chief Operations Manager	Client on behalf of County Council
Waste, recycling	Jo Colwell – Environmental Sustainability Manager	Strategy and policy
Streetscene, parks, cemeteries	Ian Brooke – Head of Community Services	Strategy and policy
Car parks	Jane Winfield – Regeneration & Major Projects Manager	Strategy, policy, budget
Caretaking	Bill Graves – Landlord Services Manager	Strategy and policy
Capital schemes	Capital Project Management	Outcomes, delivery, budget

32. Where payment for services is annually by 1/12ths, the budget will be held by the PCM alongside the existing block payment budgets such as reactive maintenance. Rebates or additional costs will be managed in year through the regular monthly meetings in discussion with the Council and ODS.
33. Performance monitoring will be based on the quality management procedures of ODS, reported into Corvu, open to both client and contractor.
34. When required there will be standing and task and finish groups of client and contractor representatives around the core monthly meeting. See table 2 below.

Table 2



Financial implications

35. The delivery of services to the Council by the LATCo through the Service Contract and the Trading Company provide for the achievement of efficiencies and additional income to the Council that will ensure:

- delivery of the Councils current medium term financial plan and the additional income streams currently attributed to Direct Services
- the covering of increased costs arising from the operation of the company in terms of auditors fees, corporation tax and tax advice and
- an additional £500k per annum by 2020/21

36. This income will be delivered back to the Council in accordance with the LATCO Business Plan in the form of dividends from the surpluses generated as indicated in the table below:

Profit				
	£000s	£000s	£000s	£000s
	2018-19	2019-20	2020-21	2021-22
Turnover	<u>54,641</u>	<u>55,142</u>	<u>55,440</u>	<u>55,590</u>
Profit before tax	1,378	1,547	1,671	1,851
Corporation Tax	(262)	(263)	(284)	(315)
Profit after tax	1,116	1,284	1,387	1,536

Percentage return				
Profit before tax %	2.52%	2.81%	3.01%	3.33%
Profit after tax %	<u>2.04%</u>	<u>2.33%</u>	<u>2.50%</u>	<u>2.76%</u>

37. In addition to the sums above, the company will pay the Council for support services, vehicle leasing charges and rent for the occupation of depots owned by the Council as well as managing income streams of behalf of the Council for car parking and garden waste.

Legal issues

38. The legal issues arising from this matter are set out in the report.

Level of risk

39. An updated Risk Register is attached at Appendix 3.

Equalities impact

40. An Equalities Impact Assessment was appended to the March 2017 report and is available as a background paper.

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Background Papers:
1 Local Authority Trading Company Report 09/03/2017
2 Local Authority Trading Company Report 18/07/2017
3 Equalities Impact Assessment